

3 explosive effects of overturning Roe

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Opinion

3 explosive political consequences of overturning *Roe*

Perhaps not what you'd expect



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With *Politico*'s [publication of the leaked draft](#) of a majority opinion overturning *Roe v. Wade* (1973), the Supreme Court appears poised to shred the constitutional right to abortion in the United States. This would trigger a political earthquake.

But what would its concrete consequences be for our political system and the electoral prospects of our two parties? I see three likely developments, none of them precisely what partisans on each side might predict.

Blowback to Republican overreach

A series of Republican-controlled states have enacted, or are in the process of enacting, [draconian restrictions on abortion](#), some banning the procedure almost from conception and with no exceptions for cases of rape, incest, or the life of the mother. Many of these laws are far more extreme than Mississippi's 15-week abortion ban, which is the case the leaked Supreme Court decision would decide. Some states, most famously Texas, have also put in place highly unusual enforcement mechanisms intended to evade the possibility of court challenges, with a few even attempting to criminalize crossing state lines for the purpose of procuring abortions.

Assuming the leaked decision stands and all of these restrictions (and other pre-existing [trigger bans](#)) come into effect without the possibility of constitutional appeal, will Republicans in these states be pushed to backtrack? Polls consistently [show](#) roughly 60 percent support for legalized abortion (at least in most cases — see below for some complications).

That number is almost certainly lower in red states. But how much lower? Lots of Republican voters are pro-life, yet do most or nearly all favor banning the procedure from conception and without exceptions? And what about the independent voters who tend to vote for Republicans without joining up with the party in a more formal way? I'd be willing to bet GOP officeholders will face pressure to liberalize many of these laws once voters realize just how extreme they are and that the courts will no longer be policing their enforcement.

Lack of midterm consequences

Plenty of Democrats appear to think overturning *Roe* will backfire so badly for Republicans, moving women away from the GOP and inspiring far more Democratic women to vote in November's midterm elections, that it will reverse their own party's poor chances in this year's midterms. I'd be willing to wager that's wrong.

The decision may have an effect on a handful of close races, but overall, there will be little change. That's because, although lots of voters may now assume overturning *Roe* will produce a nationwide abortion ban, they'll soon learn it will in fact merely return the issue to state legislatures — meaning that nothing at all will change in the states where most Democratic and pro-choice women live and vote. I suspect the result will be an initial expression of outrage followed by a lot of shoulder-shrugging.

Of course, highly informed and committed voters and activists might be motivated to cast ballots for Democrats by the prospect of new abortion restrictions being imposed in red states, but then those highly informed and committed voters and activists were probably already inclined to show up on Election Day to support the Dems. Overall, the party will continue to face very difficult prospects in November.

Blowback to Democratic overreach

But what about the opposite problem of committed Democrats staying home in November because they feel demoralized about the party's inability to protect abortion rights? That's a serious concern, and [some Dems think](#) the best way to prevent it is for Congress to come out swinging by passing a federal law enshrining the right to abortion, even if doing so requires the party's narrow

majority to eliminate the filibuster that would prevent passage of such a law.

Leaving aside the fact that the courts would be highly likely to strike down a law intruding on the police power of the states, Democrats would actually be running a considerable political risk by attempting such a move. This wouldn't be the case if they limited the scope of such a law to the first trimester, where public opinion strongly favors the pro-choice position, with support around or over 60 percent.

Beyond that, however, the Democratic position isn't so popular. Just three months ago, 48 Senate Democrats voted in favor of a bill — the [Women's Health Protection Act](#) (WHPA) — that would [enshrine the right to an abortion](#) through all nine months of pregnancy. That's despite the fact that [polls show](#) opposition to abortion [rising](#) to the mid-60s during the second trimester and then all the way up to 80 percent in the third trimester. The WHPA also would have knocked down parental consent laws in 37 states. The most recent Gallup poll to ask about [parental-consent laws](#) (from 2011) found 71 percent support for them.

If congressional Democrats pass the legislation many activists are now advising, they could well end up overshooting public opinion in much the same way Republicans are doing at the state level (and that they may also attempt at the federal level, using future majorities to enact a [nationwide abortion ban](#)).

Americans on the whole are deeply conflicted about abortion. The activists on each side of the issue are not. And because those who care most passionately about an issue tend to have an outsized influence on the shape of the debate, purists are driving both parties away from the muddled center of public opinion. As long as *Roe* remained standing, this didn't matter so much, because the courts had the final say in determining how much and what kind of restrictions were permitted.

But that 49-year status quo looks like it's about to come to an end, inaugurating a new era of political contestation, and possible compromise and conciliation, around abortion. Are compromise and conciliation even conceivable in our polarized time? Perhaps, but only if politicians of both parties spend less time doing the bidding of activists and more time listening to the American people as a whole.